MADRAS ACT No. VI OF 1867.[1]

[THE MADRAS CITY LAND-REVENUE (AMENDMENT) ACT, 1867.]

[*28th May 1867* ; *27th June 1867*.]

An Act to amend Act XII of 1851 (an Act for securing the Land-revenue of Madras.)

Preamble.

WHEREAS, in the preamble to Act XII of 1851, it is declared to be expedient that the land-revenue accruing due to the [2][Government of Madras] within the town of Madras should be ascertained and collected in as summary a manner as in other parts of the territories under the said Government, and it is enacted in section 9 of the said Act that the claim of the Government for land-revenue has priority over all claims upon the land ; and whereas in other parts of the said territories the land itself is the security for the revenue assessed thereon and is liable to be sold for the discharge of arrears, and there is no sufficient reason for exempting land situated within the town of Madras from the same liability ; and whereas it is expedient to give additional powers to the distraining officer appointed by the Collector of Madras under section 7 of the said Act ; It is hereby enacted as follows :—

"Revenue" defined.

1. The word "revenue," as used in this Act, shall mean assessment, quit-rent, ground-rent or other charge upon the land payable to the Government.

2. [*Repeal of Act XII of* 1851, *s.* 7.] *Rep. by the Repealing Act*, 1873 (*XII of* 1873).

Security for revenue.

3. The land and the buildings thereon shall be regarded as the security of the public revenue.

In default of payment, Collector to recover revenue by distress and sale of movable property.

4. Whenever any owner, tenant or occupier of land subject to the payment of revenue to the Government, or whenever any person holding such land shall, upon the written demand of the Collector, or any officer duly empowered to act on the Collector's behalf, refuse or neglect to pay any sum with which the land is charged as revenue, the Collector shall, proceed for the recovery of such revenue by distress and sale of the movable property of the owner wherever found, or, in the case of the tenant or occupier or holder of the land, by distress and sale of any movable property found upon such land.

Collector may sell lands, if arrears not recoverable by distress.

If, however, the Collector shall not be able to recover the arrears due by distress and sale of the movable property as aforesaid, it shall be lawful for the Collector to cause the land

[1] Short title, "The Madras City Land-revenue (Amendment) Act, 1867" was given by the Repealing and Amending Act, 1901 (Central XI of 1901).

[2] These words were substituted for the words "Government of India" by the Adaptation (Amendment) Order of 1950.

and buildings thereon to be sold for the arrear which has accrued due thereon, in the manner hereinafter provided.

Interest on arrears.

5. Arrears of revenue accruing on land within the town of Madras shall bear interest at the rate of six per cent per annum.

Rules as to seizure and sale of movable property.

6. In the seizure and sale of movable property for arrears of revenue, the following rules shall be observed :—

Collector to furnish distrainer with demand in writing.

First.—The Collector shall employ a person, hereinafter called the distraining officer, to distrain the property, and shall furnish to such officer a demand in writing signed by the Collector, or by some officer empowered by him in that behalf, specifying the amount of the arrear for which the distress shall be issued, and the date on which the arrear fell due.

Copy to defaulter

Second.—The distraining officer shall produce the writing as authority for making the distress, and on the day on which the property shall be distrained shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained, and the name of the place where the property may be lodged or kept.

Writing to state that property will be sold.

Third.—The writing shall further set forth that the distrained property will be brought to public sale within seven days, unless the amount of the arrear with interest and all expenses of the distress be previously discharged.

Service when defaulter absent.

Fourth.—When a defaulter shall be absent, a copy of the writing, with the endorsement, shall forthwith be fixed or left at his usual place of residence.

Procedure when defaulter neglects to pay after notice.

7. When a defaulter, on receiving notice, shall neglect to pay the amount due, or when a defaulter shall have absconded or be otherwise not forthcoming, so that the notice cannot be served upon him, the distraining officer shall transmit an inventory of the property distrained to the Collector.

Effect of tender of arrear and expenses prior to sale.

8. If a defaulter whose property has been distrained shall, before the day of sale, tender payment of the arrear demanded, together with interest and all expenses attending the distress, the distraining officer shall receive the amount of the arrear, interest and expenses, and shall forthwith release the property.

Distress proportionate to arrear.

9. The distress levied shall not be excessive, and the value of property distrained shall be, as nearly as possible, proportionate to the amount of the arrear.

Time for distress.

10. The distress shall be made after sunrise and before sunset, and not at any other time.

What places distrainer may force open.

11. The distraining officer shall have power to force open any stable, cow-house, granary, store-house, out-house or other building, as also to enter any dwelling-house the outer

door of which may be open (excepting the apartments in such dwelling-house appropriated for the zenana or residence of women, which, by the usage of the country, are considered private), and to break open the door of any room in such dwelling-house for the purpose of attaching property liable to attachment under this Act.

Distrainer's power to force open doors in presence of Police-officer.

12. Where a distraining officer shall have reason to suppose that the property liable to attachment under this Act is lodged within a dwelling-house the outer door of which may be shut, or within any apartments appropriated to women, which, by the usage of the country, are considered private, such officer shall represent the same to the officer in charge of the nearest police-station within the limits of the town of Madras; and, on such representation, the officer in charge of the said station shall send a Police-officer to the spot, in the presence of whom the distraining officer may force open the outer door of such dwelling-house.

Distraint within zenanas.

13. The distraining officer may also, in the presence of the Police-officer, after due notice given for the removal of women within a zenana, and after furnishing means for their removal in a suitable manner, if they be women of rank who, according to the custom of the country, cannot appear in public, enter the zenana apartments for the purpose of distraining the defaulter's property therein; but such property, if found shall be immediately removed from such apartments, after which they shall be left free to the former occupants.

Demand to be served prior to attachment of land.

14. Before the Collector, or other officer empowered by the Collector in that behalf, proceeds to attach the land of a defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying the amount due, the land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be seven days from the date of service upon him.

Mode of service.

Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorized agent, or by affixing a copy thereof on some conspicuous part of his last-known residence, or on some conspicuous part of the land about to be attached.

Procedure on non-payment.

15. When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into to the satisfaction of the Collector, or other officer empowered by the Collector in that behalf, he shall proceed to recover the arrear by the attachment and sale of the defaulter's land in the following manner.

Mode of attachment.

16. The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land.

The notice shall set forth that unless the arrear, with interest and expenses, be paid within the date therein mentioned, the land will be brought to sale in due course of law.

The attachment shall be notified by the public proclamation on the land, and by publication of the notice in the official Gazette of the Madras district.

Persons interested in land may release it from attachment.

17. It shall be lawful for any person claiming an interest in land which has been or is about to be attached to obtain its release by paying the arrears, interest and costs incurred; and all such sums, if paid by a tenant, may be deducted from any rent then or afterwards due by him to the defaulter; and if paid by a *bona fide* mortgagee or other incumbrancer upon the estate, shall constitute a debt from the defaulter to him, and shall be a charge upon the land, but shall, in the absence of any valid engagement to the contrary, only take priority over other charges according to the date at which the payment was made.

Rules as to sale of immovable property.

18. In the sale of immovable property under this Act the following rules shall be observed:—

Public auction.

First.—The sale shall be by public auction to the highest bidder.

The time and place of sale shall be fixed by the Collector or other officer empowered by the Collector in that behalf.

Notification before sale.

Second.—Previous to the sale, the Collector, or other officer empowered by the Collector in that behalf, shall issue a notice thereof in English and in Tamil or Hindustani, specifying the name of the defaulter; the position and extent of land and of the buildings thereon; the amount of revenue assessed on the land, or upon its different sections; the proportion of the public revenue due during the remainder of the current revenue-year; and the time, place and conditions of sale.

This notice shall be fixed up one month at least before the sale in the Collector's office, in the nearest police-station-house, and on some conspicuous part of the land.

Deposit at time of purchase.

Third.—A sum of money equal to fifteen per cent of the price of the lands shall be deposited by the purchaser in the hands of the Collector, or other officer empowered by the Collector in that behalf, at the time of the purchase; and where the remainder of the purchase-money may not be paid within thirty days, the money so deposited shall be liable to forfeiture.

Re-sale in default of payment.

Fourth.—If the purchaser refuse or omit to deposit the said sum of money or to complete the payment of the remaining purchase-money the property shall be re-sold at the expense

and hazard of such purchaser ; and the amount of all loss or expense which may attend such refusal or omission shall be recoverable from such purchaser in the same manner as arrears of public revenue.

Agents to name principals.

If the lands, on the second sale, sell for a higher price than at the first sale, the difference or increase shall be the property of him on whose account the said first sale was made.

Fifth.—All persons bidding at a sale may be required to state whether they are bidding on their own behalf or as agents, and in the latter case to deposit a written authority signed by their principal.

If such requisition be not complied with, their bids may be rejected.

Certain provisions of section 18 not to apply to cases of purchase by Government.

[1] [18-A. The provisions of the Third and Fourth clauses of section 18 shall not apply to cases where immovable property sold under this Act is purchased by the Government].

Tender of arrears up to sunset on day before sale.

19. It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching the property , or in taking the steps necessary for sale, and thereupon the sale shall be stayed :

Provided always that such tender must be made before sunset on the day previous to that appointed for the sale ; and all sums so paid by any tenant or *bona fide* mortgagee, or other incumbrancer, may be recovered in the manner provided in section 17.

Purchaser to be registered.

20. Lands purchased at a public sale shall be registered in the name of the actual purchaser, who shall receive a certificate of sale signed and sealed by the Collector, which shall be conclusive evidence of the fact of the purchase in all Courts and Tribunals where it may be material to establish the same ; and no proof of the Collector's seal or signature shall be necessary, unless the authority before whom it is produced shall have reason to doubt its genuineness.

Effect of certificate.

Proclamation of sale.

21. When lands may be purchased at public sale, the Collector, or other officer empowered by the Collector in that behalf, shall publish in the villages in which the land sold may be situated, in the Collector's kachari, and in the official

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[1] This section was inserted by s. 3 of the Madras Revenue Recovery and City Land-Revenue (Amendment) Act, 1937 (Madras Act XIV of 1937).

The Madras City Land-revenue (Amendment) Act, 1867, should be read and construed as if section 18-A had formed part of that Act from its commencement—vide section 4 (2), *ibid*—*See* also section 4 (3), *ibid*.

Gazette of the Madras district, the name of the purchaser and the date of purchase, together with a declaration of the lawful succession of such purchaser to all the rights and property of the former landholder in the said lands.

Delivery of possession.

22. If, notwithstanding such publication, any lawful purchaser of land be resisted and prevented from obtaining possession of his purchased land, any Court of competent jurisdiction, on application and production of certificate of sale provided for by section 20, shall cause the proper process to be issued for the purpose of putting such purchaser in possession in the same manner as if the purchased lands had been decreed to the purchaser by a decision of the Court.

Contracts and payments binding on purchaser.

23. All contracts entered into by the defaulter with his tenants, and all payments to him by them, shall be binding upon the purchaser as they would have been binding upon the defaulter.

Sale free of incumbrances.

24. All lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances, except such as were *bona fide* created before the coming into operation of this Act ;

Disposal of surplus.

and if any balance shall remain after liquidating the arrears with interest, and the expenses of attachment and sale, and other costs due in respect of such arrears, it shall be paid over to the defaulter, unless such payment be prohibited by the injunction of a Court of competent jurisdiction.

Recovery of arrears due to defaulter on day of sale.

25. Arrears of rent which, on the day of sale, may be due to the defaulter from his under-tenants shall, in the event of the sale, be recoverable by him after the sale by any process, except distraint, which might have been used by him for that purpose before the said sale.

Sale of land.

26. It shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to sell the whole or any portion of the land of a defaulter in discharge of arrears of revenue :

Provided always that, so far as may be practicable, no larger section in the land shall be sold than may be sufficient to discharge the arrears, with interest, and expenses of attachment and sale.

Sale may be postponed on tender of security.

27. When a defaulter tenders security, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to accept it and postpone the sale of the defaulter's property upon such conditions and until such time as he may appoint.

In the event of default being made in the performance of such conditions, the Collector or such officer may sell the property and proceed against the defaulter, or against his security, or both.

Process-servers to be paid batta.

28. Persons employed in serving notices or in other process under this Act shall be entitled to batta at such rates as may from time to time be fixed by the Board of Revenue with the sanction of [1][the State Government] and published in the official Gazette of the Madras district.

Interest and charges recoverable as arrears.

29. The batta mentioned in the foregoing section, as well as interest, and all costs and charges incurred under the authority of this Act, shall be recoverable from the defaulter and his sureties in the same manner as arrears of revenue.

Expense of countermanded sales to be sustained by the defaulter,

30. If property having been attached or distrained, be ordered to be put up for sale, and the sale be countermanded, the proprietor shall nevertheless be responsible for the expenses incurred in consequence of the attachment or distraint, in the same manner as if the sale had taken place ;

and recovered as an arrear.

and, in the event of such proprietor omitting to discharge the amount, it shall be recoverable by the process under which the original demand would have been recoverable.

Suits by persons aggrieved by proceedings.

31. Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act, except as hereinbefore provided, from applying to the Civil Courts for redress :

Limitation of suits.

Provided that Civil Courts shall not take cognizance of any suit instituted, by such parties for any such cause of action, unless such suit shall be instituted within six months from the time at which the cause of action arose.

Survival of suits against Collector.

32. No suit brought against the Collector by any person deeming himself aggrieved by anything done or purporting to be done under this Act shall abate by reason of the departure of the Collector from the district ; but the suit shall be continued against the successor of the Collector in all respects as though it had been instituted against himself.

Liability for predecessor's acts.

A suit may be brought against the Collector in his official capacity on account of anything done or purporting to have been done under this Act by his predecessor, subject to the limitation prescribed in the preceding section. Provided that the Collector shall not be personally liable for any official act of his predecessor.

Act read with Central Act XII of 1851.

33. This Act shall be read with, and taken as part of, Act XII of 1851.

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[1] The words " the Provincial Government " were substituted for the word " Government " by the Adaptation Order of 1937 and the word " State " was substituted for " Provincial " by the Adaptation Order of 1950.